C.S.-102 (3)

IN THE HON'BLE HIGH COURT OF CHATTISGARH AT BILASPUR.

W.P. . . . 1309 . . . /04.

Petitioner : S.K. Mitra, s/o Shri N.D. Mitra,
aged 44 years, r/o A-I Vidyut Nagar,
DURG (C.G.).

Versus.

Respondents : (1) Indira Gandhi Krishi Viswavidhyalaya
Through - Vice Chancellor,
Raipur (C.G.).

(2) Mr. A.S. Plaha,
Superintendent,
Physical Plant,
Indira Gandhi Krishi Viswavidyalaya
Raipur (C.G.).

P.R. No. 1312 dated
Presented by Shri Santosh Tiwari
on 10-5-04

Writ petition under Article 226/227 of the Constitution of India.

(15)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1309 of 2004

S.K. Mitra

- Versus -

Indira Gandhi Krishi Vishwavidyalaya & one another

POST FOR ORDER ON 4TH FEBRUARY, 2005

Sd/-
L.C.BHADOO
Judge

(66)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1309 of 2004

S.K. Mitra

- Versus -

Indira Gandhi Krishi Vishwavidyalaya & one another

Present: -

Mr. T.K. Tiwari, Advocate: For the petitioner.

Mr. Prashant Mishra, Sr. Advocate
With Shri H.S. Patel, Advocate: For the respondents

O R D E R

(Passed on 4th.th February, 2005)

L.C. BHADOO, J.

1. By this writ petition under Article 226/227 of the Constitution of India the petitioner has questioned the propriety and correctness of the order dated 29.4.2004 (Annexure P-4) passed by respondent No.2 whereby the contract awarded to the petitioner by the respondents relating to the construction works at different places was terminated.

2. Brief facts leading to filing of this writ petition are that the petitioner is a Class A-3 civil contractor and is entitled to take up the work valued upto Rs.1 Crore. Respondent No.2 issued a NIT inviting tender from the eligible contractors relating to the construction works at different places. In response to that, the petitioner submitted tender, after scrutiny same was accepted

and a contract agreement was entered between the petitioner and the respondents. The petitioner has also deposited the security amount of Rs.10 Lac. The petitioner's case is that he executed the work to the tune of Rs.75 Lac, payment was also made to him from time to time and about 92% of work was completed by the petitioner. The petitioner completed the work of administrative office of Veterinary College, Anjora and same was inaugurated by the then Chief Minister of the State. However, an amount of Rs.3 Lac was withheld by the respondents and on account of want of fund, as the payment was not made to the petitioner, he was not able to complete the remaining construction works. To this effect, the petitioner had made several representations (Annexure P-2), but respondent No.2 started demanding illegal gratification from the petitioner, which he denied and made a complaint before the State Economical Offence Investigation Bureau, Raipur, copy of which is Annexure P-3. On the complaint of the petitioner an enquiry was started and ultimately, with a malice respondent No.2 vide impugned order dated 29.4.2004 terminated the contract. Therefore, the petitioner has prayed that the impugned order dated 29.4.2004 (Annexure P-4) be quashed being illegal and unjust.

3. Return has been filed on behalf of the respondents in which it has been categorically mentioned that it is denied that the petitioner executed 92% of work, the chart prepared to show the percentage of work done by the petitioner (Annexure R-1) will demonstrate that the petitioner has not at all cared to execute the work with sincerity, devotion & within stipulated time and he failed to perform his contractual obligation. It is denied that payment of

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Rs.3 Lac has been withheld due to want of fund, in fact, the Comptroller of Accounts of respondent University upon review of the construction work undertaken by the petitioner was pleased to direct vide its letter dated 1.9.2003 (Annexure R-2) to the effect that no payment should be made to the petitioner, but upto that time payment of Rs.15 Lac was already made to the petitioner as an advance, even then the petitioner failed to show the sufficient progress in the construction works. It has further been mentioned in the return that the construction work mainly related to research related construction of animal house, mushrooms growing house, seed storage etc. These works were of emergent nature because the students undertaking studies in the respondent-University were facing acute problems of proper research facilities which was of paramount importance for a research student, however, because of callous and negligent attitude of the petitioner the research work of the University has also suffered adversely. The fact of demand of illegal gratification has been denied and it has been mentioned that the petitioner failed to comply with the terms & conditions of the contract agreement and to fulfill his contractual obligations inspite of warning given to him. Therefore, the petition of the petitioner is liable to be dismissed with costs.

4. Learned counsel for the petitioner argued that infact the petitioner executed the work and amount of Rs.3 Lac was withheld by the respondents without any valid reason and on account of which the petitioner could not complete the work, for which the petitioner sent several letters dated 28.11.2003, 13.12.2003 & 22.3.2004 to respondent No.2 mentioning the

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petitioner's difficulties, even then the payment was not made. Therefore, for no fault on the part of the petitioner the contract was cancelled vide impugned order. Counsel further argued that as per Clause-3 of the contract agreement before cancellation of the petitioner's contract respondent was required to give 30 days notice, whereas no notice was given to the petitioner. Therefore, on this count the impugned order is arbitrary and passed without following the procedure of principle of natural justice.

5. On the other hand, learned Senior Counsel Shri Mishra argued that no payment of the petitioner was withheld, however on inspection when the Vice Chancellor of the respondent University found that the petitioner has not completed the work within stipulated time, he directed the Comptroller of Accounts that the payment of the petitioner be stopped as the work was not being done at the required speed, which is evident from Annexure R-2, when the petitioner failed to execute the work in stipulated time, a notice dated 28.7.2003 was issued to the petitioner in which he was asked that inspite of direction given to the petitioner orally as well as in writing he is not completing the work in the stipulated time and on account of non-completion of work the respondents University is suffering financial loss and facing inconvenience. Petitioner was further informed that on inspection the work was not found completed which shows the indifferent attitude of the petitioner and his interest in completion of the work, therefore, he was directed to complete the work immediately and appear before respondent No.2 within three days, failing which the work will allocated to some other competent agency at the cost and risk of the petitioner and for which the petitioner will be responsible. As

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such, after giving this notice and also letter-dated 15.9.2003, when the petitioner failed to execute the work in time, then and then only vide impugned order the contract awarded to the petitioner was cancelled. Learned Senior Counsel further argued that as the petitioner failed to perform his contractual obligation, therefore, the contract of the petitioner was cancelled in accordance with the terms & conditions of the contract agreement. The petitioner is not entitled to seek any relief from this Hon'ble Court, as the dispute relates to contractual matters, which is in the realm of private law.

6. Having heard learned counsel for the petitioner and learned Sr. Counsel for the respondents, perused the relevant records.

7. It is an admitted position that after acceptance of the tender of the petitioner a contract agreement (Annexure R-4) was entered between the petitioner & the respondents and perusal of agreement shows that all the twelve works shown in Annexure R-1 were given to the petitioner to be executed within stipulated time, but the petitioner failed to complete work within the stipulated time, which is evident from perusal of Annexure R-1, which was prepared on 28.7.2003 by then the time period of the contract was already over. It is also evident from Annexure R-1 that the boys hostel at Durg was constructed only 37%, seed store building, Jagdalpur was constructed 19%, Special repair of Entomology Department was constructed 9%, Extension of dairy shed construction 11%, small animal house constructed 36% and other works were also executed upto the extent of 42%, 25%, 54%, 34%, 52% and 66%. Out of total works, only construction of Item No.12 was completed, therefore, most of works were

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incomplete even after the expiry of period of contract. It is evident from Annexure R-2 that on 1.9.2003 the Comptroller of Accounts of the respondent University sent a letter to respondent No.1 to the effect that the work progress report was produced before the Vice-chancellor of the University and according to which the work was not completed by the petitioner, therefore, it was ordered that if any payment is due to the respondents that may be stopped. It appears that Rs.3 Lac was stopped on account of said letter of Comptroller of Accounts, therefore, the contention of the petitioner that even after completion of the work payment was not made is not sustainable. It is also evident from the letter-dated 28.7.2003 that the petitioner was asked orally as well as in writing to complete the work within stipulated time, but he failed to complete the work within stipulated time and on account of that the respondents University suffered financial loss. By the said letter the petitioner was also asked to complete the work immediately, appear before respondent No.2 within three days and to explain the situation, failing which the petitioner was informed that the work will be got executed from other competent agency at the risk and cost of the petitioner and for which the petitioner will be responsible. Even thereafter, on 15.9.2003 again the petitioner was asked to complete the work and inform respondents within three days about the progress report of the completion of the work, failing which it was informed that the action will be initiated in accordance with contract agreement. When the petitioner failed to execute the work according to Annexure R-1, even after issuance of notice dated 28.7.2003 and letter dated 15.9.2003, then the impugned order was passed.

8. In the circumstances, the petitioner was not entitled to put the blame on the shoulders of respondents, he himself was responsible for not completing the work within stipulated time inspite of written communication and warning given to him. In view of the above facts, the arguments of learned counsel for the petitioner that 30 days notice was not given to him is without any force, for the reason that notice was already given to the petitioner on 28.7.2003 and thereafter, on 15.9.2003 for his failure to execute the work in stipulated time and thereafter, only invoking the provisions of sub-clause (c) of Clause 3 of agreement impugned order was passed. Moreover, in this case as per Clause-2 of the contract agreement the time was the essence of the contract and the petitioner was required to strictly observe the contract conditions and to commence the work. The petitioner was also required to maintain the schedule till the completion of the contract work, which he failed to maintain. Therefore, in this case no principle of natural justice has been violated, more over, in the contractual matters parties are entitled to invoke agreement clause and where agreement is there then the principle of natural justice cannot be invoked.

9. Now coming to the question of maintainability of this writ petition, the Hon'ble Apex Court in the matter of **M/s Radhakrishna Agarwal and others V. State of Bihar and others** reported in **AIR 1977 SC 1496** in Paragraph 25 held that " *the limitations imposed by rules of natural justice cannot operate upon powers which are governed by the terms of an agreement exclusively. The only question which normally arises in such cases is whether the action complained of is or is not in consonance with*

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the terms of the agreement and the question of the distinction between an administrative and quasi-judicial decision can only arise in the exercise of powers under statutory provisions. Rules of natural justice are attached to the performance of certain functions regulated by statutes or rules made thereunder involving decision affecting right of parties. When a contract is sought to be terminated by the Officers of the State, purporting to act under the terms of an agreement between parties, such action is not taken in purported exercise of a statutory power at all." In the present case the matter relates to contractual agreement between the parties, therefore, the principle of natural cannot be invoked in this case. Even otherwise, this petition is not maintainable and the petitioner is not entitled to invoke extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, as this matter relates to the contractual obligation, only in the case of statutory contracts where the State or its instrumentalities failed to observe the statutory provisions or principle of natural justice and on the facts the action of State of its instrumentalities is found to be arbitrary, unfair and unreasonable then and then the extra-ordinary jurisdiction under Article 226 of the Constitution of India can be invoked and for this, I am fortified in my view by the decision of the Hon'ble Apex Court in the matter of **Bareily Development Authority and another Vs. Ajai Pal Singh and others** reported in **(1989) 2 Supreme Court Cases 116** wherein the Hon'ble Apex Court has held that *"when State or 'other authority' within the meaning of Article 12 enters into ordinary contract with private persons, parties are governed by the terms of the contract and aggrieved party not entitled to seek redress under*

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Article 226 for breach of contract". Similar view was taken by the Hon'ble Apex Court in the matter of **State of Bihar and others Vs. Jain Plastics and Chemicals Ltd.** reported in **(2202) 1 Supreme Court Cases 216**. In this case the Hon'ble Apex Court has held that "*seriously disputed questions arising out of breach of contract are required to be investigated and determined on the basis of the evidence led in a civil suit.* In the matter of **Food Corporation of India and others V Jaggannath Dutta and others** reported in **AIR 1993 Supreme Court 1494, State of U.P., and others V. Bridge & Roof Company (India) Ltd.,** reported in **(1996) 6 Supreme Court Cases 22, Kerala State Electricity Board and another V. Kurien E Kalathil and others** reported in **(2000) 6 Supreme Court Cases 293** and **National Highways Authority of India V Ganga Enterprises and another** reported in **(2003) 7 Supreme Court Cases 410,** the Hon'ble Apex Court has held that:

> "....the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated and could not have been agitated, in a writ petition and the disputes arising from such activities must be settled according to principles of law of contract and held that writ petition is not maintainable".

10. Learned counsel for the petitioner relied upon the judgment reported in **AIR 2002 Madras Page 95** between **M/s Concrete Products and Construction Co. and another Vs Union of India and others**. In that case it was held that "*in case of breach of*

contract the right of the State Government to assessee damages would arise only if the breach of conditions is admitted or if no issue is made of it. Where the breach is not admitted, unless the claim is established through a Court of law, no amount can be recovered". On facts the Madras High Court has held that *"learned Solicitor General of India, constituted a High Power Committee to go into, enquire and determine the irregularities said to have been committed by the petitioners and since such enquiry had been, for the reasons not explained, delegated to the Zonal Level Sub-committee, who themselves are admittedly parties to the agreements and the Zonal Level Sub-committee is sub-ordinate to the Railway Board, who directed to hold any enquiry against the petitioners, the same is liable to be held as arbitrary and discriminatory, attracting Article 14 of the Constitution of India".* Similarly, celebrated judgment cited by learned counsel for the petitioner in the matter of **Tata Cellular Vs. Union of India** reported in **AIR 1996 SC 11** is also not applicable in the present case and same is no help to the petitioner on the facts of the present case.

11. In view of the above, the petition of the petitioner is not maintainable under Article 226 of the Constitution of India on the grounds mentioned above as well as being a contractual matter. Accordingly, the petition is dismissed. No order as to costs.

Sd/-
L.C.BHADOO
Judge

Roshan/-